

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Comcast Corporation)	IC No. 03-S82849
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: August 26, 2003

Released: August 27, 2003

By the Deputy Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we reconsider a previous Order, DA 03-1743 ("May Order"), released on May 21, 2003. In the *May Order*, we found that Comcast Corporation ("Comcast") changed the Complainant's telecommunications service provider without obtaining proper authorization and verification.¹ On reconsideration, we affirm that Comcast's actions resulted in an unauthorized change in Complainant's telecommunications service provider, and we deny Comcast's Petition for Reconsideration.²

2. In December 1998, the Commission released the *Section 258 Order* in which it adopted rules to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act).³ Section 258 prohibits the practice of

¹ See 47 C.F.R. §§ 64.1100 – 64.1190.

² Comcast Petition for Reconsideration, filed June 20, 2003 ("Petition").

³ 47 U.S.C. § 258(a); Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996); *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*), *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); First Order on Reconsideration, 15 FCC Rcd 8158 (2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, 15 FCC Rcd 15996 (2000), Errata, DA No. 00-2163 (rel. Sept. 25, 2000), Erratum, DA No. 00-2192 (rel. Oct. 4, 2000), Order, FCC 01-67 (rel. Feb. 22, 2001); Third Order on Reconsideration and Second Further Notice of Proposed Rule Making, 18 FCC Rcd 5099 (2003); Order, FCC 03-116, (rel. May 23, 2003). Prior to the adoption of Section 258, the Commission had taken various steps to address the slamming problem. See, e.g., *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911, 101 F.C.C.2d 935, *reconsideration denied*, 102 F.C.C.2d 503 (1985).

“slamming,” the submission or execution of an unauthorized change in a subscriber’s selection of a provider of telephone exchange service or telephone toll service.⁴ In the *Section 258 Order*, the Commission adopted aggressive new rules designed to take the profit out of slamming, broadened the scope of the slamming rules to encompass all carriers, and modified its existing requirements for the authorization and verification of preferred carrier changes. The rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.⁵ Pursuant to Section 258, carriers are absolutely barred from changing a customer’s preferred local or long distance carrier without first complying with one of the Commission’s verification procedures.⁶ Specifically, a carrier must: (1) obtain the subscriber’s written or electronically signed authorization in a format that meets the requirements of Section 64.1130 authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber’s order.⁷

3. The Commission also has adopted liability rules. These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. In that context, if the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.⁸ Where the subscriber has paid charges to the unauthorized carrier, the Commission’s rules require that the unauthorized carrier pay 150% of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.⁹ Carriers should note that our actions in this order do not preclude the Commission from taking additional action, if warranted, pursuant to Section 503 of the Act.¹⁰

4. We received a complaint on February 25, 2003, alleging that Complainant’s telecommunications service provider had been changed from the authorized carrier to Comcast without Complainant’s authorization. Pursuant to Sections 1.719 and 64.1150 of our rules,¹¹ we

⁴ 47 U.S.C. § 258(a).

⁵ See 47 C.F.R. § 64.1120.

⁶ 47 U.S.C. § 258(a).

⁷ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁸ See 47 C.F.R. §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.*

⁹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹⁰ See 47 U.S.C. § 503.

¹¹ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

notified Comcast of the complaint and Comcast responded on April 10, 2003.¹² Comcast stated that a letter of agency was not obtained from the subscriber; however, a letter notification was submitted to the Commission under our streamlined procedures. Our rules allow a telecommunications provider to acquire all or part of another carrier's subscriber base without obtaining each individual subscriber's authorization and verification, provided that the acquiring carrier comply with our streamlined procedures.¹³ To comply with these procedures, the acquiring carrier must file with the Commission's Office of the Secretary, no later than 30 days before the planned transfer, a letter notification in CC Docket 00-257 that meets the requirements of Section 64.1120(e) of our rules.¹⁴ However, in the instant case, the letter notification was not properly filed because it did not include a copy of the notice to be sent to customers, as is required by the streamlined procedures.¹⁵ Accordingly, in the *May Order*, we found that Comcast failed to produce clear and convincing evidence of a valid carrier change.¹⁶

5. Comcast states in its Petition that the Commission's streamlined procedure rules were in fact fully employed in the instant case and, therefore, the Commission should reverse its finding in the *May Order*.¹⁷ Included with its Petition are two notices that Comcast asserts were sent to customers at the time of the submission of the letter notification to the Commission. The first notice concerned the transfer of customers from AT&T Long Distance to AT&T Broadband. The second notice ("AT&T Comcast Notice") concerned the transfer of customers to a new entity called AT&T Comcast Corporation (now Comcast Phone, LLP).

6. As noted above, these customer notices were not included in the letter notification submitted to the Commission, in contravention of our streamlined rules.¹⁸ Furthermore, the customer notices Comcast now submits do not contain certain information required by the

¹² Comcast's Response to Informal Complaint No. IC 03-S82849, received April 10, 2003.

¹³ See 47 C.F.R. § 64.1120(e).

¹⁴ *Id.* In our *Streamlining Order*, the Commission stated that "a change in corporate structure that is invisible to affected subscribers does not constitute a sale or transfer for purposes of section 258 that implicates this streamlined process." The Commission noted that requiring notice for such *pro forma* transfers "might cause customer confusion where there would otherwise be none." However, the Commission also stated that "other *pro forma* transactions, while routine in certain respects, will require the use of the streamlined process because they involve carrier-to-carrier sales or transfers of customers" (see 2000 Biennial Review-Review of Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers; Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, First Report and Order in CC Docket No. 00-257 and Fourth Report and Order in CC Docket No. 94-129 ("Streamlining Order"), 16 FCC Rcd 11218 (2001) at ¶ 13). In the instant case, the transaction involves a transfer of customers from one entity to another new, and differently named, entity, and presumably would not be imperceptible to the affected customers.

¹⁵ See 47 C.F.R. § 64.1120 (e)(1).

¹⁶ *Id.*

¹⁷ See Petition at 2-3.

¹⁸ See *May Order* at 3 (stating that Comcast did not properly file this letter notification with the Commission).

rules.¹⁹ For example, the AT&T Comcast Notice, which Comcast asserts was sent to Complainant in the instant case, does not contain “detailed information on the rates, terms and conditions of the service(s) the acquiring carrier will provide.”²⁰ In addition, it is unclear from the notice the date the service transfer will occur²¹ (the notice appears to suggest that the transfer will occur during the month of October; Comcast indicates in its Petition that the actual transfer took place on November 15).²² For the forgoing reasons, we decline to reverse our finding that Comcast has failed to produce clear and convincing evidence of a valid carrier change.

7. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission’s rules, 47 C.F.R. §§ 0.141, 0.361, 1.719, the Petition for Reconsideration filed by Comcast IS DENIED.

8. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Margaret M. Egler, Deputy Chief
Consumer & Governmental Affairs Bureau

¹⁹ See 47 C.F.R. § 64.1120(e)(3).

²⁰ *Streamlining Order* at ¶ 22; 47 C.F.R. § 64.1120(e)(3)(ii).

²¹ See 47 C.F.R. § 64.1120(e)(3)(i).

²² Comcast Petition at note 12. We recognize that under certain circumstances the actual transfer date may differ the date indicated in the notices; accordingly, our rules require that the acquiring carrier file with the Commission notification of any material changes to the required information. 47 C.F.R. § 64.1120(e)(2).